

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

June 28, 2010

Ricky B. Hickman
Sussex Correctional Institution
P. O. Box 500
Georgetown, DE 19947

RE: State v. Hickman
Defendant ID No. 0301005176 (R-2)

Dear Mr. Hickman:

Jupiter must be aligned with Mars. Your second Motion for Postconviction Relief filed on June 18, 2010, was the fourth Motion for Postconviction Relief received by this Judge that was filed on June 18, 2010.

I have reviewed your file, together with your lengthy motion, but find it must be procedurally barred and, therefore, it is denied.

BACKGROUND

In 2003, you were arrested for delivery of cocaine and delivery of cocaine within 1,000 feet of a school. The trial took place in June of 2003. You were convicted of both offenses. On July 1, 2003, the State moved to have you sentenced as an habitual offender under both the provisions of 11 *Del. C.* § 4214(a) and (b). You were determined to be an habitual offender and sentenced on the delivery of cocaine charge to the balance of your natural life. (Criminal Action No. 03-01-0739). As to the delivery within 1,000 feet of a school, you were sentenced to a period of ten (10) years at Level 5 (Criminal Action No. 03-01-0740). The life sentence was imposed pursuant to 11 *Del. C.* § 4214(b). The ten-year sentence was imposed pursuant to 11 *Del. C.* § 4214(a).

Following a direct appeal, your conviction was affirmed. *Hickman v. State*, 2004 WL 691970 (Del. Mar. 24, 2004), 846 A.2d 238 (Del. 2004) (TABLE).

Thereafter, you filed a Motion for Postconviction Relief in 2006 attacking your identification at trial, the convictions used as a basis for the habitual offender finding, and finally, alleging that the conviction of both delivery and delivery of cocaine within 1,000 feet of a school involved the same conduct and, therefore, one of these charges should have been barred on double jeopardy grounds. This Motion was denied by decision of this Court on September 6, 2006. *State v. Hickman*, 2006 WL 2663014 (Del. Super. Sep. 6, 2006).

In the present Motion, you spend many, many pages arguing you should not be serving multiple punishments for the same conduct. Ultimately, you ask that the Court vacate and throw out the life sentence based on your habitual offender status and let you serve just the ten (10) years imposed on the delivery within 1,000 feet of a school offense.

You also allege your trial counsel was not effective for failing to make proper motions to challenge the multiple charges, as well as for failing to seek a jury instruction for a lesser offense although it is unclear what lesser offense that would have been.

The present Motion must be procedurally barred for the following reasons:

- (1) In your first Motion for Postconviction Relief, you attacked the ability of the State to try and convict you for both delivery of cocaine and delivery of cocaine within 1,000 feet of a school. The Court addressed the merits and advised you as to why you could be punished under two different statutes for your conduct. You did not appeal. Therefore, on September 6, 2006, this matter was adjudicated and the decision is final because you did not appeal it. The procedural bar of Rule 61(i)(4) is applied.
- (2) At the time you were convicted, you had three (3) years to file a Postconviction application pursuant to Superior Court Criminal Rule 61(i)(1). You did so. Your second Motion now comes over six (6) years from the date of the decision and mandate affirming your direct appeal and therefore, it is time-barred.
- (3) Finally, I note the Motion is repetitive and barred by Rule 61(i)(2).

For the aforestated reasons, your second Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary
Department of Justice